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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

8 HPG, LLC,

9 Plaintiff,

10 v.

11 KATHRYN KERRIGAN,

12 Defendant
13

Case No. C18-1872RSL

ORDER OF DISMISSAL

14 This matter comes before the Court on “Defendant’s Motion to Compel Arbitration
15 and Dismiss Plaintiff’s Complaint and its Motion for Preliminary Injunction.” Dkt. # 23.
16 Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the
17 Court finds as follows:

18 “[A]rbitration is a matter of contract” and “arbitrators derive their authority to
19 resolve disputes only because the parties have agreed in advance to submit such
20 grievances to arbitration.” AT&T Techs., Inc. v. Commc’ns Workers, 475 U.S. 643, 648-
21 49 (1986). Before a matter will be forced into arbitration, the Court must determine
22 (a) whether a valid agreement to arbitrate exists and (b) whether a particular dispute falls
23 within the scope of the agreement. United Steelworkers of Am. v. Warrior & Gulf, 363
24 U.S. 574, 582-83 (1960). Neither party challenges the validity of the agreement to
25

1 arbitration in the context of this motion. The Court therefore turns to whether the dispute
2 falls within the scope of the parties' agreement.

3 The Employee Confidentiality Agreement defendant was required to sign when
4 she began working for plaintiff includes the following provision:

5 **6.5 Arbitration.** Any controversies or claims arising out of or relating to
6 the Employment Agreements or to Employee's employment with
7 [plaintiff's subsidiary] shall be fully and finally settled by arbitration under
8 the auspices of Judicial Dispute Resolution. The arbitration shall be
9 conducted in King County, Washington, by one arbitrator either [sic]
10 mutually agreed upon by [plaintiff's subsidiary] and Employee. Each party
11 shall bear his, her, or its own costs and expenses of any such proceeding,
12 except that the arbitrator shall retain the discretion to award attorney's fees
13 to the prevailing party. Judgment upon the award rendered by the arbitrator
14 may be entered in any court of competent jurisdiction. Notwithstanding
15 anything herein to the contrary, nothing in this Agreement shall preclude
16 Employee or [plaintiff's subsidiary] from seeking injunctive or other
17 immediate legal protection or relief where in such party's sole opinion the
18 absence of such relief or protection would cause irreparable harm to such
19 party. Either party may serve a demand for arbitration upon the other within
20 the statute of limitation period that would otherwise apply if the action were
21 filed in court.

22 Dkt. # 20-1 at 6. The promise to arbitrate applies to any claims or controversies arising
23 out of defendant's employment and clearly encompasses the breaches of the Employee
24 Confidentiality Agreement alleged in this case.¹

25 Plaintiff does not oppose dismissal of its claims in favor of arbitration, but argues
26 that the Court should first resolve its pending motion for preliminary injunction. Plaintiff
has taken the position that the use of the word "notwithstanding" in the sentence
regarding injunctive relief means that requests for preliminary relief do not fall within the

¹ The Court assumes, for purposes of this motion, that plaintiff has standing to pursue the contractual rights of its subsidiary.

1 scope of the agreement to arbitrate. The Court disagrees. Using general state-law
2 principles of contract interpretation (Mundi v. Union Sec. Life Ins. Co., 555 F.3 1042,
3 1044 (9th Cir. 2009)), the sentence on which plaintiff relies simply makes clear that the
4 parties have the right to seek preliminary injunctive relief prior to arbitration and award.
5 The sentence says nothing about a change of venue for such requests: there is no
6 reference to courts of competent jurisdiction or any other judicial venue, and the Court
7 would have to add language to the agreement in order to authorize recourse to a judicial
8 forum. Even if there were an ambiguity regarding whether the agreement to arbitrate
9 encompasses requests for preliminary relief, the presumption in favor of arbitrability
10 applies. Granite Rock Co. v. Int'l Bhd. of Teamsters, 561 U.S. 287, 301 (2010). “[A]n
11 order to arbitrate the particular grievance should not be denied unless it may be said with
12 positive assurance that the arbitration clause is not susceptible of an interpretation that
13 covers the asserted dispute.” Goldman, Sachs & Co. v. City of Reno, 747 F.3 733, 742
14 (9th Cir. 2014) (quoting AT&T Techs., 475 U.S. at 650). As discussed above, the
15 arbitration clause at issue here is susceptible to an interpretation that preliminary
16 injunctive relief.

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18 For all of the foregoing reasons, defendant’s motion to compel arbitration (Dkt.
19 # 23) is GRANTED. The above-captioned matter is hereby DISMISSED for lack of
20 subject matter jurisdiction.

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22 Dated this 18th day of June, 2019.

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24 Robert S. Lasnik
25 United States District Judge